

CALifornians for Renewable
Energy, Inc. (CARE)
C/o Michael Boyd
5439 Soquel Drive
Soquel, CA 95073

State of California
Energy Resources Conservation
And Development Commission

In the Matter of:)	
)	Docket No. 01-AFC- 21
)	
Application for Certification for the)	Prehearing Conference Statement
Tesla Power Plant Project)	of CALifornians for Renewable
[By F P & L Energy])	Energy, Inc. (CARE)
_____)	

Prehearing Conference Statement

1. The topic areas that are complete and ready to proceed to evidentiary hearings;

Project Description, Facility Design, Geology & Paleontology, Traffic & Transportation

2. The topic areas that are not complete and not yet ready to proceed to evidentiary hearings, and the reasons therefore;

The topic areas of Power Plant Reliability & Efficiency, Compliance Monitoring and Closure, Project Alternatives, Transmission System Engineering, Transmission Line Safety & Nuisance, Air Quality, Biological Resources, Visual Resources, Hazardous Materials Management, Land Use, Noise, Worker Safety & Fire Protection, Water Resources, Public Health, and Socioeconomics and associated mitigation measures are dependent on the Applicants ability to sell electricity at market based rates.

On June 25th, 2003 the Federal Energy Regulatory Commission (FERC) issued its Order To Show Cause Concerning Gaming And/Or Anomalous Market Behavior against F P & L Energy in FERC Docket No. EL03-155-000, an order "to show cause why their behavior, as set forth infra, during the period January 1, 2000 to June 20, 2001¹ does not constitute gaming and/or

¹ June 20, 2001 has been selected as the end date of the relevant period in this proceeding when a prospective mitigation and market-monitoring plan took effect. See infra note 56; see San Diego Gas & Electric Co., et al., 95 FERC ¶ 61,115 (April 26, 2001 Order), order on reh'g, 95 FERC ¶ 61,418 (2001) (June 19, 2001 Order) (In the April 26, 2001 Order, the Commission issued a prospective mitigation and market monitoring plan for wholesale sales through the organized real-

anomalous market behavior as defined in the ISO and PX tariffs².” The FERC went on to “direct the ALJ Administrative Law Judge] to hear evidence and render findings and conclusions quantifying the full extent to which the Identified Entities may have been unjustly enriched as a result of their conduct. The ALJ may recommend the monetary remedy of disgorgement of unjust profits and any other additional, appropriate non-monetary remedies.”³

As such CARE contends that the potential disgorgement of unjust profits and loss of market based rate authority by F P & L Energy, making it impossible complete the necessary analysis of the topic areas to proceed while F P & L Energy’s financial solvency and market based rate authority is uncertain; and therefore these topic areas are not ready not yet ready to proceed to evidentiary hearings, pending the outcome of the FERC proceedings.

3. The topic areas that remain disputed and require adjudication, and the precise nature of the dispute for each topic;

Cultural Resources, CARE is concerned based on Applicant’s witness James Bard’s ability to comply with Commission conditions during the development of the Metcalf Energy Center in San Jose.

Socioeconomics, CARE is concerned with the Commission’s ability to comply with the requirement of the federal Civil Rights Act of 1964 in permitting this project in this community of color.

4. The identity of each witness sponsored by each party, the topic area(s) which each witness will present; a brief summary of the testimony to be offered by each witness; qualifications of each witness; and the time required to present direct testimony by each witness;

1. AIR QUALITY - Robert Sarvey will provide testimony on adequacy of staff’s and applicant’s analysis, cumulative impacts, mitigation agreements, compliance with

time markets operated by the ISO; the Commission acted on requests for rehearing and clarification of the April 26, 2001 Order on June 19, 2001, modifying and expanding the mitigation plan, effective June 20, 2001.)

² As discussed below, we will also direct the ISO to provide the Identified Entities with certain transaction data that it relied upon in its study, which is discussed below, and contemporaneously file that data with the Commission.

³ This potential disgorgement would apply to the period January 1, 2000 to June 20, 2001 and would be in addition to any refunds owed for the period after October 2, 2000 in the California Refund Proceeding. By order issued on August 23, 2000, the Commission, among other things, established a refund effective date of October 29, 2000, 60 days after the date of publication in the Federal Register of the Commission’s intent to institute an investigation. *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, et al.*, 92 FERC ¶ 61,172 (2000) (August 23, 2000 Order). By order issued on November 1, 2000 in the same proceeding, the Commission granted rehearing in part of the August 23, 2000 Order by changing the refund effective date from 60 days after publication of notice in the Federal Register (October 29, 2000) to 60 days after the date of SDG&E’s complaint (October 2, 2000). *San Diego Gas & Electric Co., et al.*, 93 FERC ¶ 61,121 at 61,370 (2000) (November 1, 2000 Order), order on reh’g, 97 FERC ¶ 61,275 (2001) (December 19, 2001 Order) (denying rehearing of the November 1, 2000 Order with respect to the October 2, 2000 refund effective date). In a December 15, 2000 order, the Commission found that the spot markets operated by the ISO and PX were dysfunctional. *San Diego Gas & Electric Co., et al.*, 93 FERC ¶ 61,294 (2000)

LORS, and includes those topics covered by Mr. Sarvey as a Party in the East Altamont Energy Center (01-AFC-4).

2. BIOLOGICAL RESOURCES – Dr. Shawn Smallwood will provide testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by Dr. Smallwood as an expert witness for CARE in the East Altamont Energy Center (01-AFC-4).

3. VISUAL RESOURCES - Robert Sarvey will provide testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by Mr. Sarvey as a Party in the East Altamont Energy Center (01-AFC-4).

4. HAZARDOUS MATERIALS MANAGEMENT- Robert Sarvey will provide testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by Mr. Sarvey as a Party in the East Altamont Energy Center (01-AFC-4).

5. LAND USE - Robert Sarvey, along with representatives of the Sierra Club, will provide testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by Mr. Sarvey as a Party in the East Altamont Energy Center (01-AFC-4).

6. NOISE - Robert Sarvey will provide testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by Mr. Sarvey as a Party in the East Altamont Energy Center (01-AFC-4).

7. WORKER SAFETY & FIRE PROTECTION Robert Sarvey and the City of Tracy Fire Department, will provide testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by Mr. Sarvey and the City of Tracy Fire Department as Mr. Sarvey's expert witness, as a Party in the East Altamont Energy Center (01-AFC-4).

8. WATER RESOURCES - Bill Powers, P.E. of Powers Engineering, will provide expert testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, Dry-cooling as the environmentally preferred alternative, and includes those topics covered by Mr. Powers as a Party in the Palomar Energy Project (01-AFC-24).

9. CULTURAL RESOURCES – Francisco Da Costa will provide testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by CARE as a Party in the Metcalf Energy Center (99-AFC-3) from the perspective of the Muwekma Ohlone people.

10. SOCIOECONOMICS – Lynne Brown and Maurice Campbell of the Bayview Hunters Point based San Francisco of Community First Coalition will provide expert testimony on adequacy of staff's and applicant's analysis, cumulative impacts, mitigation agreements, compliance with LORS, and includes those topics covered by

CARE as a Party in the Delta Energy Center (98-AFC-3) from the perspective of the persons of color.

5. Topic areas upon which a party desires to cross-examine witnesses, a summary of the scope of such cross-examination, and the time desired for such cross-examination;

CARE wishes to cross-examine staff, applicant, and intervenor witnesses, on the specific topic areas identified in section 4 of the Prehearing Statement.

6. A list identifying exhibits and declarations that each party intends to offer into evidence and the technical topics to which they apply;

Exhibit CARE 1 - Show Cause Concerning Gaming And/Or Anomalous Market Behavior against F P & L Energy in FERC Docket No. EL03-155-000 (103 FERC ¶ 61,345)

7. Proposals for hearing dates, briefing deadlines, vacation schedules, and other scheduling matters; and

None at this time.

8. For all topics, the parties shall review all proposed Conditions of Certification for enforceability, comprehension, and consistency with a party's respective analysis, and submit any proposed modifications.

None at this time.

Respectfully submitted,

By



Filed Electronically 7-22-03
Michael E. Boyd – President, CARE
5439 Soquel Drive
Soquel, California 95073
(831) 465-9809
E-mail: michaelboyd@sbcglobal.net

Verification

I am an officer of the intervening corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 22nd, 2003, at Soquel, California

A handwritten signature in black ink that reads "Michael E. Boyd". The signature is written in a cursive style with a large, stylized 'M' and 'B'.

Michael E. Boyd – President, CARE
CALifornians for Renewable Energy, Inc. (CARE)
5439 Soquel Dr.
Soquel, CA 95073-2659
Tel: (408) 891-9677
Fax: (831) 465-8491

michaelboyd@sbcglobal.net